

CLASS ACTION BLOG

# Plaintiff Destroyed CAFA Jurisdiction By Omitting Class Action Allegations in the Fourth Amended Complaint.

AUTHOR: ANTHONY MARTIN

Attorney Gale, on behalf of all Connecticut title attorneys, filed a class action lawsuit in federal court asserting jurisdiction under CAFA. Gale sued multiple title insurance companies in Connecticut. After twelve years of litigation plaintiffs filed a fourth amended complaint which “asserted only state law claims on behalf of the individual plaintiffs” because they thought that doing so would “facilitate the resolution of the case.” On the defendants’ motion, the court dismissed the case for lack of CAFA jurisdiction.

Plaintiff initially filed the CAFA suit seeking injunctive and declaratory relief plus money damages. After certifying the case as a Rule 23(b)(2) class action, the district court decertified the case once the Supreme Court issued its ruling in *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011). The Second Circuit stated that *Dukes* held “a class could not be certified under Rule 23(b)(2) if the class sought monetary relief that was not merely incidental to the injunctive or declaratory relief sought.”

The Second Circuit affirmed the dismissal for lack of CAFA jurisdiction based primarily on the Supreme Court’s opinion in *Rockwell Int’l Corp. v. United States*, 549 U.S. 457, 473–74, (2007). The Court in *Rockwell* explained that both “‘the state of things’ and ‘the alleged state of thing’ must support jurisdiction.” The Court then added that if a “plaintiff files a complaint in federal court and then voluntarily amends the complaint, courts look to the amended complaint to determine jurisdiction.” That is exactly what the plaintiff had done in *Gale*, so based on *Rockwell*, the Second Circuit affirmed the dismissal.

The court distinguished plaintiff filed cases from defendant removed cases. If a defendant removes a case to federal court and there is federal court jurisdiction at the time of removal, the plaintiff cannot defeat subject matter jurisdiction by filing an amended complaint. Even though the plaintiff is the master of his complaint, a plaintiff will not be allowed to divest a federal court of jurisdiction by amending the complaint and frustrating a defendant’s “federal right to remove the case and to be heard in a federal court.”

Plaintiff tried to save federal court jurisdiction relying upon *Grupo Dataflux v. Atlas Glob. Grp.*, L.P., 541 U.S. 567 (2004). There, the court stated in relevant part that “the jurisdiction of the court depends upon the state of things at the time of the action brought.” The Second Circuit stated plaintiff misunderstood the “time-of-filing rule.” Furthermore, *Rockwell* emphasized jurisdiction had to be supported by allegations in the amended complaint. The Second Circuit panel explained the “time-of-filing rule applies to changes of the ‘state of things,’ but not to changes of the ‘*alleged* state of things.’” Because plaintiff withdrew all allegations supporting jurisdiction, the district court lost jurisdiction; the withdrawn allegations had not been “replaced by others that establish[ed] jurisdiction.” Accordingly, the Second Circuit held “by removing all class-action allegations in the [fourth amended complaint], plaintiff divested the district court of CAFA jurisdiction.”

The Gale case helps clarify the somewhat tricky rules for obtaining and retaining federal court subject matter jurisdiction in cases originally filed as putative class action cases. The rules are fact dependent. Important facts include: who originally filed the case, whether the case was filed by a plaintiff in federal court attempting to obtain federal court jurisdiction or removed to the federal court by the defendant attempting to have federal jurisdiction asserted, and whether facts are alleged which establish federal subject matter jurisdiction at the critical time.

Case citation: *Gale v. Chicago Title Insurance Company*, 929 F.3d 74 (2nd Cir. 2019)